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Before the  
Federal Communications Commission  
Washington, D.C. 20554

SEP 24 2003

Federal Communications Commission  
Office of the Secretary

In the Matter of Application of )  
 ) WT Docket No 03-188  
RICHARD A BURTON )  
 ) FCC File No 0000920745  
For General Mobile Radio Service License )

To Chief Administrative Law Judge  
Richard L. Sippel

**JOINT MOTION TO DISMISS**

1 The Enforcement Bureau (the "Bureau") and Richard A. Burton ("Mr. Burton") hereby jointly request that the presiding Administrative Law Judge ("ALJ") dismiss the captioned application and terminate the captioned proceeding.

2 On June 11, 2002, Mr. Burton filed the above-captioned application for a new General Mobile Radio Service ("GMRS") license. On August 7, 2003, the Commission, by the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, acting pursuant to delegated authority, commenced this proceeding by *Hearing Designation Order*, DA 03-2607 ("*HDO*"). The *HDO* recites that the Commission cannot grant Mr. Burton's application without a hearing because of substantial and material questions of fact concerning Mr. Burton's character, questions which arose due to his criminal convictions involving transmitting radio signals without a license, administrative adjudications which found Mr. Burton unqualified to hold a Commission license, and possible unlicensed operations following his most recent such conviction. Accordingly, the *HDO* designated Mr. Burton's GMRS license application for hearing to determine (a) the effect of his criminal convictions and prior administrative

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adjudications, and (b) whether he had engaged in unlicensed operations following his October 2000 conviction on his qualifications to hold a GMRS license. Based on the evidence adduced, the *HDO* required a determination as to whether Mr. Burton's captioned application should be granted. The *HDO* placed the burdens of proceeding and proof on Mr. Burton.

3 By *Order*, FCC 03M-32, released August 20, 2003, the Chief ALJ assigned the proceeding to himself and established September 24, 2003, as the date for the Prehearing Conference. However, after learning that Mr. Burton might be unable to attend the conference, the ALJ, on September 10, 2003, convened a conference call that included himself, Mr. Burton, and counsel for the Bureau. During the conference, Mr. Burton stated that he no longer wished to prosecute his captioned application and that he had no intention of applying for any GMRS authorization, including the license that he had sought by the captioned application.

4 Section 1.934(c) of the Commission's rules<sup>1</sup> permits Commission dismissal of an application that seeks a license in the Wireless Radio Services for failure of the applicant to prosecute. Such dismissals may be without prejudice. Inasmuch as Mr. Burton has stated that he no longer wishes to prosecute his application and that he has no intention of applying again for the GMRS license, the Bureau and Mr. Burton agree that the most appropriate course is dismissal of the above-captioned application. Mr. Burton understands and acknowledges that dismissal of his application may not avoid the need to examine his qualifications in an administrative hearing, should he change his mind and apply for another license in the Wireless Radio Services at some point in the future. Mr.

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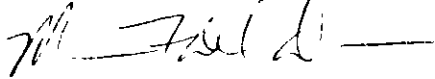
<sup>1</sup> 47 C.F.R. § 1.934(c)



Burton further understands and acknowledges that dismissal of his application will have no effect whatsoever on any action the Commission may take with respect to unlicensed operation that may have occurred subsequent to his most recent conviction in October 2000

5 Accordingly, the Bureau and Mr. Burton jointly move to dismiss the captioned application and terminate the captioned proceeding

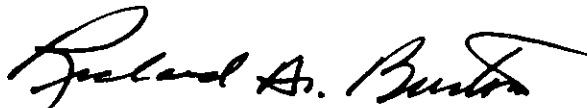
Respectfully submitted,



Maureen F. Del Duca  
Chief, Investigations and Hearings Division  
Enforcement Bureau



James W. Shook  
Attorney  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 3-B443  
Washington, D.C. 20554  
(202) 418-1420



Richard A. Burton  
Applicant

September 25, 2003

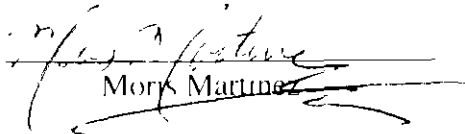


CERTIFICATE OF SERVICE

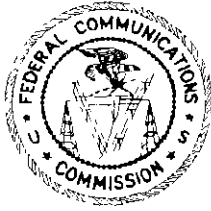
Moris Martinez, a clerk in the Enforcement Bureau's Investigations and Hearings Division, certifies that he has, on this 25th day of September, 2003, sent by first class United States mail, electronic mail (e-mail) or delivered by hand, copies of the foregoing "Joint Motion to Dismiss" to

Richard A. Burton  
1614 W. 257<sup>th</sup> Street, Unit 10  
Harbor City, CA 90710

Chief Administrative Law Judge Richard L. Sippel (by hand)  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 1-C768  
Washington, D.C. 20054

  
Moris Martinez





**FEDERAL COMMUNICATIONS COMMISSION**  
Enforcement Bureau  
Investigations and Hearings Division  
445 12<sup>th</sup> Street, S.W., Suite 3-B443  
Washington, D.C. 20554

September 12, 2003

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Richard A. Burton  
1614 W. 257<sup>th</sup> Street  
Unit 10  
Harbor City, CA 90710

**Re: WT Docket No. 03-188**  
**File No. EB-03-IH-0385**

Dear Mr. Burton:

As discussed with the presiding Administrative Law Judge, we are enclosing with this letter a "Joint Motion to Dismiss." Please review the document to verify that it contains what we discussed and agreed to with the judge, sign it where indicated on page 3, and return it to us in the enclosed envelope. We will then file it, give the judge a copy, and send a fully-signed copy to you. Thereafter, we expect the judge to issue an order that dismisses your application and terminates the hearing proceeding.

Thank you for your cooperation in this matter. If you have any questions about the motion or this letter, please call me at 202 418-1448.

Sincerely,

James W. Shook  
Trial Attorney  
Investigations and Hearings Division  
Enforcement Bureau  
Federal Communications Commission

Enclosures

cc: Chief Administrative Law Judge Richard L. Sippel (without enclosures)